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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/776,321	04/15/97	WUBBEN M	29865

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EXAMINER	
SHERRER,C	
ART UNIT	**PAPER NUMBER**
1761	32

DATE MAILED: 11/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/776,321	Applicant(s) Wubben et al
	Examiner Curtis E. Sherrer	Group Art Unit 1761

☒ Responsive to communication(s) filed on *May 8, 2000*

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *18, 20-29, 31, 36, 37, 39, 40, and 43-51* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *18, 20-29, 31, 36, 37, 39, 40, and 43-51* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 50 and 51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended their claims by inserting the following phrase for which no specificational basis was given or found: Again, the limitations of Claim 50 and 51. While Applicants state that those of ordinary skill in the art would be able to produce hop pectin extracts of up to 100%, no evidence of this was supplied.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Papazian (The New Complete Joy of Home Brewing, page 64) as evidenced by The Practical Brewer (pages 138-39) for the reasons set forth in the last Office Action.

5. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Lutzen et al (Homebrew Favorites, pp. 80 and 81) as evidenced by The Practical Brewer (pages 138-39) for the reasons set forth in the last Office Action.

6. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukovskii et al. (S.U. Pat. No. 685689) for the reasons set forth in the last Office Action.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 18, 20-29, 31, 50 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al. for the reasons set forth in the last Office Action

9. Claims 18, 20-29, 31, 50 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al in view of The Practical Brewer and in further view of Food Colloids (pp. 418-35) for the reasons set forth in the last Office Action.

10. Claims 18, 20-29, 31, 36, 37, 39, 40 and 43-51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoelle et al (U.S. Pat. No. 3,333,181) for the reasons set forth in the last Office Actions.

Response to Arguments

11. Applicants' arguments filed 005/08/00 and 08/23/00 have been fully considered but they are not persuasive.

12. Applicants submitted the Wijsman Declaration (Paper #31) of August 23, 2000. The following observations are made concerning the data contained therein. First, the Examiner found it more probative to compare the increase in foam retention as a percentage and therefore percentages have been calculated based on average extended foam time divided by average amount of reference foam time. From this it is seen that hop pectin A (at 3.08 g AUA/hl beer)

had a 15.8% increase in foam while hop pectin B (at 4.29 g AUA/hl beer) had a 33.6% increase. Beet pectin 2 (at 5.99 g AUA/hl beer) had a 16.9% increase.

13. No data was supplied on beet pectin 1 (at 5.67 g AUA/hl beer), which appeared to function better at increasing foam, i.e., 19.1%. No explanation is given for said data's absence.

14. What was found interesting was the comparison of the various hop pectins at the various use rates. See ¶ 10 of Declaration. When the concentration of hop pectin A was increased (to 5.0 g AUA/hl beer) the percentage dropped to 15.2% and when hop pectin B was increased (to 5.0 g AUA/hl beer) the percentage also dropped, to 25.8%. No explanation is found why such a dramatic drop occurs. (The drop in hop pectin A is less than in hop pectin B even though A contains a lower concentration of pectin, as measured as AUA per hl.)

15. It is noted that when comparing these percentages with beet pectin 1, said beet pectin outperforms hop pectin A, and may well be within the statistical deviation of the performance data of hop pectin B.

16. It is also noted that, while Appellants arguments are directed to the performance of hop pectin B, as shown the previous Wijsman Declaration, that portion of data appears (and it is assumed) to identical as Experiment 7 of the most recent Wijsman Declaration. When comparing that Experiment to the other Experiments, it is considered that Exp. 7 is an aberration, rather than the norm. As such, arguments relying on this data are not found persuasive.

17. In the end, it is not clear what the data proves. It almost appears to show a negative correlation with the amount of hop pectin, suggesting that pectin is not the active ingredient for increasing foam retention.

18. Applicants also state that the beet pectin was prepared via an alcohol wash without providing any further description.

19. Lastly, Applicants tested around 10 g/hl and the claimed range varies from 0.5 to 30 g/hl. A more thorough showing would test the ends of the range.

20. With respect to the rejection based on Hoelle et al, it is inherent that the prior art method is adding pectin to the beer. Hoelle et al are not merely adding hops, but an extract of spent hops, as are Applicants. Therefore, a *prima facie* case of obviousness exists and no unexpected results have been presented to overcome this rejection. The residue used contains pectins and other ingredients such as those found in Applicants residue. Applicants have not compared their hop pectin extract with Hoelle et al's hop pectin extract.

Conclusion

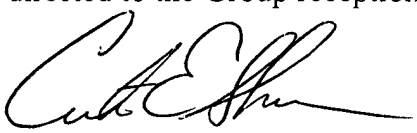
21. No claim is allowed.

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The fax phone number for this Group is (703)-305-3602.

24. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curtis E. Sherrer
Primary Examiner
November 3, 2000